SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB") 1001 I Street, Sacramento, California, 95814, and SYSCO FOOD SERVICES OF CENTRAL CALIFORNIA INC., (hereinafter "SYSCO "), 136 S. Mariposa Road, Modesto, California 95354.

I. RECITALS

(1) Health and Safety Code, Section 39650-39675 mandates the reduction of the emissions of substances that have been determined to be toxic air contaminants (TACs). In 1998, following an exhaustive 10-year scientific assessment process, the Air Resources Board identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. Transport refrigeration units (TRUs) are powered by diesel fueled engines that emit toxic particulate matter. TRUs are controlled under section 2477 within chapter 9, division 3, Title 13 of the California Code or Regulations (CCR).

(2) CCR, Title13, section 2477 (e) (1) (E) (1) Requires Owner/Operators of all California based TRUs or TRU generator (gen) sets subject to the regulation to apply for an ARB identification number for all California-based TRUs or TRU gen sets.

(3) CCR, Title13, section 2477 (e) (1) (E) (1) (d) states: Failure to apply or submittal of false information is a violation of state law subject to civil penalty.

(4) The ARB, has documented that SYSCO submitted false Engine Model Number data in the Air Resources Board Equipment Registration (ARBER) system.

(5) Health and Safety Code, Sections 39674 (a) and (b) authorize civil penalties for the violation of the programs for the regulation of toxic air contaminants not to exceed one thousand dollars ($1,000.00) or not to exceed ten thousand dollars ($10,000.00) respectively, for each day in which the violation occurs.

(6) In order to resolve its violations described in paragraph (4) above, SYSCO has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, the ARB accepts this Agreement in termination and settlement of this matter.

(7) In consideration of the foregoing, and of the promises and facts set forth Herein, the parties desire to settle and resolve all claims disputed, and obligations relating to the above-listed violations and voluntarily agree to this matter by means of this Agreement. Specifically, the ARB and SYSCO agree as follows:

II. TERMS & RELEASE

In consideration of the ARB not filing a legal action against SYSCO for the violations referred to above, the ARB and SYSCO agree as follows:

(1) Upon execution of this Agreement, the sum of five thousand dollars ($5,000.00) shall be paid on behalf of SYSCO, as follows:

- $3,750.00 to the **California Air Pollution Control Fund.**
- $1,250.00 to the **Peralta Community College District** to fund diesel technology education programs at California Community Colleges.
- Checks with the signed settlement agreement shall be sent to:

  Mr. John Swanson, Air Pollution Specialist
  Air Resources Board, Enforcement Division
  1001 "I" Street, P.O. Box 2815
  Sacramento, CA 95812

(2) SYSCO shall not violate CCR, Title 13, Section 2477.

(3) SYSCO shall correct all of the Engine Model Number data in the Air Resources Board Equipment Registration (ARBER) system database within 45 days of the signing of this Agreement.

(4) This Agreement constitutes the entire agreement and understanding between ARB and SYSCO concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and SYSCO concerning the subject matter hereof.

(5) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all parties to this Agreement.

(6) Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.

(7) This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.

(8) This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the ground that said party drafted it.

(9) **SB 1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the ARB to provide information on the basis for the penalties it seeks (see Health and Safety Code section 39619.7). This information, which is provided throughout this settlement agreement, is summarized here.

The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.

Penalties must be set at levels sufficient to discourage violations. We consider all relevant circumstances in determining penalties, including the factors specified in Health and Safety Code sections 42403 and 43024.

The per unit penalty in this case is a maximum of $1,000 per unit per day for strict liability violations. We are seeking a total penalty from you of approximately $100.00 per unit for the submittal of incorrect or inaccurate information (incorrect engine model number information) for 52 units for a total penalty of $5,000.00.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

The penalty provision being applied is this case is Health and Safety Code section 39674 because SYSCO failed to comply with the Air Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units and TRU Generator Sets codified in Title 13, California Code of Regulations section 2477 which was adopted under authority of Health and Safety Code section 39600, et seq.

Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.

The penalties are not being assessed under a provision of law that prohibits the emission of pollution at a specified level. The penalties are being assessed for the submittal of incorrect or inaccurate information under CCR, Title13, section 2477 (e) (1) (E) (1) (d).

(10) SYSCO acknowledges that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed in Health and Safety Code section 43024, has explained the manner in which the penalty amount was calculated (including a per unit or per vehicle penalty, if appropriate), and has identified the provision of law under which the penalty is being assessed. The quantity of excess emissions is not applicable in this case, because the penalties are being assessed for the submittal of false information.

(11) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar cases negotiation, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a number of days considered together with the complete circumstances of this case. The penalty was discounted in this matter based on the fact that this was a first time violation and the violator made unusually diligent efforts to comply and to cooperate with the investigation. Penalties in future cases might be smaller or larger on a per unit basis.

(12) The penalty in this case reflects ARB's assessment of the relative strength of its case against SYSCO, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that SYSCO may have secured from its actions.

(13) Now therefore, in consideration of the payment on behalf of SYSCO to the California Air Pollution Control Fund and the Peralta Community College District, the ARB hereby releases SYSCO and its principals, officers, agents, predecessors and successors from any and all claims for past violations of Health and Safety Code Sections 39650-39675 and CCR, title 13, section 2477, the ARB may have based on the circumstances described in paragraph (4) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

By: _____

Name: James R. Ryden
Title: Chief, Enforcement Division
Date: 4/18/11

SYSCO Food Services of Central California, Inc.

By: Jerilyn Yerby, CFO

Name: Jerilyn Yerby
Title: CFO
Date: 3-16-11

Air Resources Board

Mary D. Nichols, Chairman
9480 Telstar Avenue, Suite 4
El Monte, California 91731 www.arb.ca.gov

Linda S. Adams
Secretary for Environmental Protection

Arnold Schwarzenegger
Governor

Sent by Certified Mail # 7002 0510 0003 2319 9763

May 25, 2011

Ms. Stephanie Casenza
Office of the Chancellor
Peralta Community College District
333 East 8th Street
Oakland, California 94606

RE: $1,250.00 TO THE PERALTA COMMUNITY COLLEGE DISTRICT TO BE DISTRIBUTED TO FUND DIESEL TECHNOLOGY PROGRAMS AT CALIFORNIA COMMUNITY COLLEGES

Dear Ms. Casenza:

Enclosed please find settlement check 490038 made out to the Peralta Community College District from our case with SYSCO Food Services of Central California, Inc.

As agreed, five percent ($62.50) of this settlement check will be distributed to the Peralta Community College District's Fund. The remainder of this check is to be distributed, in five equal parts ($296.87 each), to the following California Community Colleges who participate in the California Council on Diesel Education and Technology (CCDET) Program for the purchase of necessary diesel technology equipment:

San Joaquin Delta College
5151 Pacific Avenue
Stockton, CA 95207
Attn: Ken Pekarek

College of Alameda
555 Atlantic Avenue
Alameda, CA 94501
Attn: Michael Robertson

Los Angeles Trade Tech College
400 W. Washington Blvd.
Los Angeles, CA 90015
Attn: Michael Cavanaugh

Palomar Community College
1140 W. Mission Road
San Marcos, CA 92069
Attn: Joe Schaeffer